

NEVADA PACIFIC MINING CO., INC.

IBLA 97-149

Decided July 29, 1999

Appeal from decision of the Arizona State Office, Bureau of Land Management, denying a request for reimbursement or credit for mining claim maintenance fees. A MC 338006 et al.

Affirmed.

1. Accounts: Refunds--Mining Claims: Rental or Claim Maintenance Fees: Generally

Under 43 C.F.R. ' 3833.1-1(c), maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited. Where a mining claimant has failed to provide a sufficient basis to support such a determination, a decision denying a refund will be affirmed.

APPEARANCES: John C. Lacy, Esq., Tucson, Arizona, for appellant; Richard R. Greenfield, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Nevada Pacific Mining Company, Inc., has appealed from a December 3, 1996, decision of the Arizona State Office, Bureau of Land Management (BLM), denying its September 16, 1996, request for reimbursement or credit for \$3,700 in mining claim maintenance fees inadvertently included with fees for other claims for the 1997 assessment year. The fees were submitted to satisfy the requirements of section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. ' 28f(a) (1994), under which the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998.

In its September 16, 1996, letter, appellant identified 37 mining claims that it had located from December 1995 through March 1996 1/ for

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1/ The 37 claims and serial numbers are identified as follows: FMG-1 through FMG-9 (A MC 338006 through A MC 338014); KIWI-1 through KIWI-7 (A MC 339926 through A MC 339932); and IRBG-1 through IRBG-21 (A MC 339933 through A MC 339953).

which notices of location had been timely filed with BLM as required by 43 U.S.C. ' 1744(b) (1994). The letter explained that the notices of location for the 37 claims had never been recorded with the Mohave County Recorder's Office as required by Arizona Revised Statutes ' 27-203 and that the claims were null and void under ' 27-203.E.

In its decision, BLM explained that after notices of location for mining claims are filed, BLM does not verify that the notices were recorded with the county, and that BLM's records showed that the claims were still considered active when the maintenance fees were received.

[1] The disposition of this appeal is governed by Departmental regulation 43 C.F.R. ' 3833.1-1(c) which provides: "Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited." (Emphasis added.) In its Answer to appellant's Statement of Reasons (SOR), BLM points out that it had no knowledge that appellant's claims were invalid until it received appellant's refund request. BLM had made no determination that the claims were null and void, and contends that "the ministerial function of determining whether a mining claim is valid or even active remains with BLM \* \* \* [and] has not been delegated." (Answer, 11.)

Appellant argues in its Reply to BLM's Answer that BLM can make the determination whether the claim was forfeited under state law. In support of its contention that the claims were null and void, appellant quotes the following provisions of Arizona law:

Ariz.Rev.Stat. ' 27-203 provides as follows:

A. The locator of a lode, placer, or millsite claim shall:

1. Cause to be recorded in the office of the county recorder of the county in which the claim is located an executed copy of the location notice \* \* \* within ninety days from the time of location.

\* \* \* \* \*

E. Failure to do all things within the times and at the places specified in subsections A, B, C. and D shall be an abandonment of the claim, and all right and claim of the locator shall be forfeited.

Therefore, since the recording required by state law never occurred, the claims, based on a literal reading of A.R.S. ' 27-203.E, were forfeited and abandoned on the 91st day after they were initially located on the ground.

(SOR at 3.)

Assuming, arguendo, that BLM has authority to declare a claim invalid because of failure to comply with a state recordation statute, we find appellant's argument unpersuasive because it is not supported by case law showing that the courts have given the statute the literal reading that appellant advances here. We note that in Goldfield Mines, Inc. v. Hand, 147 Ariz. 498, 711 P.2d 637, 647 (Ariz. App. 1985), the court stated:

Notwithstanding the existence of Arizona statutory language seemingly requiring a contrary result, the Arizona Supreme Court has held that the failure to record location notices within the time fixed by statute does not render the locations invalid, except as to adverse rights acquired before the late recording. See Perley v. Goar, 22 Ariz. 146, 195 P. 532 (1921).

Accordingly, we conclude that appellant has failed to establish that the claims were forfeited under state law at the time of payment of the maintenance fees.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. ' 4.1, the decision appealed from is affirmed.

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James L. Byrnes  
Chief Administrative Judge

I concur:

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James F. Roberts  
Acting Administrative Judge